National Association for Behavioral Healthcare

Access. Care. Recovery.

7 September 2021

Chiquita Brooks-LaSure
Administrator, Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Requirements Related to Surprise Billing; Part I [CMS-9909-IFC]

Dear Administrator Brooks-LaSure:

The National Association for Behavioral Healthcare (NABH) respectfully submits the following comments on the Interim Final Rules regarding Requirements Related to Surprise Billing; Part I.

NABH represents behavioral healthcare systems that provide mental health and addiction treatment across the entire continuum of care, including inpatient, residential treatment, partial hospitalization, and intensive outpatient programs, as well as other facility-based outpatient programs including medication assisted treatment centers. Our membership includes behavioral healthcare providers in 49 states and Washington, D.C.

Our members continue to struggle to meet increased need for behavioral healthcare during the Covid-19 pandemic, and we are concerned that the new requirements related to surprise billing will further strain these providers and result in less access to critically needed mental health and addiction treatment services.

We expect an increasing need for inpatient psychiatric care in the coming years due to the Covid-19 pandemic. National surveys have repeatedly shown dramatic increases in the incidence of anxiety and depression; most recently, the Centers for Disease Control and Prevention (CDC) found that symptoms of anxiety and depression increased significantly between August 2020 to February 2021.[i] Suicidal ideation has increased,[ii] and drug overdoses have spiked with more than 90,000 deaths in 2020 (more than 20,000 additional deaths than the previous high number in 2019).[iii] Moreover, even before the pandemic, serious behavioral health conditions had become so prevalent and elevated that they lowered overall life expectancy in the United States.[iv] Furthermore, previous epidemics have shown that the impact on behavioral health will continue for years to come.[v]

The Covid-19 pandemic has magnified the need for improved access to behavioral healthcare; however, we know there are severe shortages of behavioral healthcare providers in many parts of the United States. According to the Health Resources and Services Administration, as of September 2, 2021, more than one-third of Americans (125 million people) lived in 5,788 mental health professional shortage areas.[vi] In these areas, the number of mental health providers available were adequate to meet about 27% of the estimated need.[vii] Moreover, by 2030, the number of psychiatrists is expected to decrease by 20%, and addiction counselors will also be in short supply.[viii] Reimbursement for psychiatric inpatient services is often inadequate to cover costs. Consequently, the number of beds has decreased by at least 64% since 1970.[ix]

Many psychiatric hospitals have negative net operating margins despite offering services that are in high demand in communities across the country.[x] The Covid-19 pandemic has added to the strain on these facilities with additional financial losses and unexpected costs, including those related to greatly increased use of personal protective equipment, increased screening of individuals coming into the facilities with additional staffing needs for screening, and other infection-control measures, including isolation rooms and units, software and hardware purchases to facilitate telework for administrative staff and telehealth for patients, and lost revenue due to

decreased patient volume because of infection concerns and reduced referrals.

Recently, behavioral healthcare settings have also been struggling with severe workforce shortages. These shortages have been in the news recently; for instance, Oregon had to request the National Guard assist with staffing these facilities, while Virginia stopped admitting new patients in its five state mental hospitals amid its staffing crisis.[xi]

In the context of these ongoing concerns, we urge the Centers for Medicare & Medicaid Services (CMS) to mitigate the extent to which the new surprise billing rules impose additional burdens on behavioral healthcare providers that are already struggling to meet greatly increased needs with less capacity.

Thus, we support the position adopted in these rules to exclude behavioral healthcare services from the prohibition on notice and consent to balance bill. As the preamble to these rules explains, mental health and addiction treatment services are more likely to be accessed out-of-network in an in-network hospital setting than other types of treatment.[xii] This finding is consistent with other research showing that, in general, individuals with mental health or substance use disorders access out-of-network care at higher rates.

These findings highlight the need for improved provider networks to ensure adequate in-network access to mental health and addition services, not additional hurdles for patients and providers. For example, a recent study found that Medicare Advantage networks included only 23% of psychiatrists in a county on average — lower than all other medical specialties.[xiii]

This widespread lack of adequate behavioral healthcare providers in health plan and insurance issuer networks often results from lower reimbursement rates and other barriers that do not comply with federal mental health and addiction treatment parity requirements. Despite enactment of the *Mental Health Parity and Addiction Treatment Act* in 2008, individuals with commercial insurance, the primary focus of that law, are more likely to seek care out of network for treatment and face higher out-of-pocket costs.[xiv]

We urge CMS to use the opportunity presented by the *No Surprises Act* to ensure health plans and health insurers increase the number of behavioral healthcare providers in their networks to lessen the need for individuals who require mental health and/or addiction treatment to access those providers out of network. In addition, we urge you to ensure these new rules do not further strain behavioral healthcare providers struggling to meet significantly increased demand with less resources and staff.

Thank you for considering our concerns and recommendations. If you have any questions, please contact me directly at shawn@nabh.org or 202-393-6700, ext. 100, or contact NABH Director of Policy and Regulatory Affairs Kirsten Beronio at kirsten@nabh.org or 202-393-6700, ext. 115.

Sincerely,

Shawn Coughlin
President and CEO

About NABH

The National Association for Behavioral Healthcare (NABH) represents provider systems that treat children, adolescents, adults, and older adults with mental health and substance use disorders in inpatient behavioral healthcare hospitals and units, residential treatment facilities, partial hospitalization and intensive outpatient

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programs, medication assisted treatment centers, specialty outpatient behavioral healthcare programs, and recovery support services in 49 states and Washington, D.C. The association was founded in 1933.

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